IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

WP(C).No. 26024 of 2007(W)

AGAINST E.P.NO.392/2004 IN OS.491/2003 of M.C.,WADAKKANCHERRY

.....

PETITIONER: JUDGEMENT DEBTOR

VELAPPAN,
S/O.MELASRAMBIKKAL KUTTAN, AGED 47 YEARS,
PAINKULAM VILLAGE AND DESOM, THALAPPILLY TALUK.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENT: DECREE HOLDER

RADHALAKSHMI,
D/O.VADAKKETHIL SANKARA NARAYANAN,
THRINKKANKODU VILLAGE AND DESOM,
OTTAPALAM TALUK, PALAKKAD.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

==========

W.P.(C) No.26024 OF 2007

==========

Dated this the 10th day of September 2007

JUDGMENT

This writ petition is preferred against the order of the Munsiff's Court, Wadakkancherry in E.P.No.392 of 2004 in O.S.No.491/2003. The decree for execution has been filed by the wife against the husband and the husband has pleaded no means. It is the case of the petitioner in the E.P. that the respondent therein is a mason by profession and he is having 15 cents of land and he is deliberately and intentionally avoiding payment. On the other hand, the respondent would contend that he is not medically fit to do any work as he is having ailment in the stomach and further there is no income for him. Exts.A1 and A2 are the encumbrance certificates and Ext.A3 is the ownership certificate issued by the Panjal Panchayat. Section 125 of the Code of Criminal Procedure would show that the husband who is having physical capacity is bound to pay the amount. I am conscious of the fact that such an analogy can be drawn in a civil case. But, whatever it may be, the respondent is having 15 cents of property which shows that there are assets with him which he could make use of for raising the amount

and satisfying the decree amount. I do not find any mistake committed by the learned Munsiff in finding the means of the person.

2. Learned counsel for the petitioner would submit that if some breathing time is given to his client, he will be in a position to pay the amount. There is no purpose in sending a person to jail where the wife is in need of maintenance. Therefore, I grant 3 months' time for the petitioner to pay the amount on the following conditions:(1)He shall pay an amount of Rs.5,000/- on or before 15.10.2007, (2) He shall pay the balance amount in two equal monthly instalments commencing from 15.11.2007,(3) If he commits default in payment of any of these amounts, the benefit granted under this judgment will automatically stand cancelled and the decree holder will be at liberty to request the court to issue warrant of arrest against the judgment debtor in execution of the decree and (4) In order to enable the petitioner to pay the amount the warrant of arrest now ordered shall remain suspended for the above period.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-